

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 602

Introduced by Assembly Member Spitzer
(Coauthor: Assembly Member Huff)

February 17, 2005

An act to ~~amend Section 1812.82 of~~ *add Section 1812.96 to the* Civil Code, relating to health studios.

LEGISLATIVE COUNSEL'S DIGEST

AB 602, as amended, Spitzer. Health studios: ~~bonds.~~

Existing law governs health studio contracts.

This bill would require a seller of health studio services to hold in trust all money received from a consumer if the health studio facility has not yet opened for business, except in certain circumstances, and would prohibit the seller from drawing on, transferring, or encumbering those funds, except as specified.

~~Existing law governs health studio services contracts. Among other things, existing law requires that these contracts be in writing, provides that the contracts may not exceed a 3-year term, and requires that a copy of the contract be given to the buyer at the time he or she signs the contract.~~

~~This bill would require that health studios, as defined, maintain a bond, a letter of credit, or a certificate of deposit in a specified amount prior to entering into a contract for health studio services. The bill would require health studios to make specified disclosures regarding these provisions. The bill would require that a copy of the bond, letter of credit, or certificate of deposit, be filed with the Secretary of State. The bill would also require the Secretary of State to provide a copy of this information upon request.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1812.82 of the Civil Code is amended~~
2 ~~to read:~~

3 *SECTION 1. Section 1812.96 is added to the Civil Code, to*
4 *read:*

5 *1812.96. (a) Except as provided in subdivision (c) or (d), all*
6 *money received by the seller of health studio services from a*
7 *consumer for a health studio facility that has not yet opened for*
8 *business shall be held in trust and shall be deposited in a trust*
9 *account established in a state or federally chartered bank or*
10 *savings association. The seller shall not draw, transfer, or*
11 *encumber any of the money held in trust until five business days*
12 *after the health studio facility has opened and the seller has fully*
13 *paid refunds to consumers who canceled their contracts as*
14 *provided in subdivision (b) or in Section 1812.85.*

15 *(b) In addition to any other cancellation rights, a consumer*
16 *who pays any money under a contract for health studio services*
17 *for a health studio facility that has not yet opened for business*
18 *has the right to cancel the contract and receive a full refund at*
19 *any time prior to midnight of the fifth business day after the date*
20 *the health studio opens for business. The cancellation right shall*
21 *be set forth in the contract. The refund shall be paid within 10*
22 *days of receipt of notice of cancellation.*

23 *(c) Notwithstanding subdivision (a), a seller of health studio*
24 *services may draw on money held in trust to pay refunds or may*
25 *draw, transfer, or encumber funds to the extent that the amount is*
26 *offset by a bond of equal or greater amount that satisfies this*
27 *subdivision. The bond shall be issued by a surety insurer*
28 *admitted to do business in this state and shall be filed with the*
29 *Secretary of State. The bond shall be in favor of the State of*
30 *California for the benefit of consumers harmed by a violation of*
31 *this title.*

32 *(d) Subdivision (a) does not apply to a seller of health studio*
33 *services that is, at the time money is received from the consumer,*
34 *operating at least five health studio facilities in this state that*
35 *have been in operation for a period of at least five years, and*

1 *that has current tangible assets, based on book value, that exceed*
2 *current liabilities by at least one million dollars (\$1,000,000).*

3 ~~1812.82. (a) Every contract for health studio services shall be~~
4 ~~in writing and shall be subject to the provisions of this title. A~~
5 ~~copy of the written contract shall be given to the customer at the~~
6 ~~time he or she signs the contract.~~

7 ~~(b) Except as otherwise provided in subdivision (a), every~~
8 ~~health studio, before it enters into any contract for health studio~~
9 ~~services shall at all times maintain, except as otherwise provided~~
10 ~~in this section, one of the following:~~

11 ~~(1) A bond with a corporate surety, from a company~~
12 ~~authorized to do business in this state.~~

13 ~~(2) An irrevocable letter of credit or a certificate of deposit~~
14 ~~from a California state or federally chartered bank, trust~~
15 ~~company, savings bank or savings and loan association qualified~~
16 ~~to do business in this state and insured by the federal deposit~~
17 ~~insurance corporation.~~

18 ~~(c) The principal sum of the bond, letter of credit, or certificate~~
19 ~~of deposit described in subdivision (b) shall be one of the~~
20 ~~following, as applicable:~~

21 ~~(1) Fifty thousand dollars (\$50,000) if the health studio~~
22 ~~contracts for services for a term not greater than 12 months.~~

23 ~~(2) Seventy-five thousand dollars (\$75,000) if the health~~
24 ~~studio contracts for services for a term of more than 12 months~~
25 ~~but not more than 24 months.~~

26 ~~(3) One hundred fifty thousand dollars (\$150,000) if the health~~
27 ~~studio contracts for services for a term of more than 24 months~~
28 ~~but not more than 36 months.~~

29 ~~(d) For health studios with three or more facilities, or for~~
30 ~~multiple franchises of a common franchisor, the following~~
31 ~~amounts shall be added to the sum required in subdivision (c) for~~
32 ~~the bond, letter of credit, or certificate of deposit:~~

33 ~~(1) For three or four facilities or franchises an additional fifty~~
34 ~~thousand dollars (\$50,000).~~

35 ~~(2) For five or six facilities or franchises an additional one~~
36 ~~hundred thousand dollars (\$100,000).~~

37 ~~(3) For seven or nine facilities or franchises an additional one~~
38 ~~hundred fifty thousand dollars (\$150,000).~~

39 ~~(4) For 10 or more facilities or franchises an additional two~~
40 ~~hundred thousand dollars (\$200,000).~~

1 ~~(e) The bond, letter of credit, or certificate of deposit shall be~~
2 ~~payable in favor of the people of the state of California for the~~
3 ~~benefit of any buyer injured in the event that the seller goes out~~
4 ~~of business prior to the expiration of the buyer's contract for~~
5 ~~services, or otherwise fails to provide a refund to the buyer after~~
6 ~~cancellation of the buyer's contract for services.~~

7 ~~(f) A copy of the bond, letter of credit, or certificate of deposit~~
8 ~~shall be filed with the Secretary of State. The Secretary of State~~
9 ~~shall provide a copy of this information upon request.~~

10 ~~(g) The aggregate liability of the surety upon the bond or the~~
11 ~~banking organization upon the letter of credit or certificate of~~
12 ~~deposit to all persons for all breaches of the conditions of the~~
13 ~~bond shall in no event exceed the amount of the bond, letter of~~
14 ~~credit, or certificate of deposit.~~

15 ~~(h) The bond, letter of credit, or certificate of deposit filed and~~
16 ~~maintained pursuant to this section shall not be canceled,~~
17 ~~revoked, or terminated except after notice to, and with the~~
18 ~~consent of, the Secretary of State at least 45 days in advance of~~
19 ~~the cancellation, revocation, or termination.~~

20 ~~(i) Any person claiming against the bond, letter of credit, or~~
21 ~~certificate of deposit may bring and maintain an action against~~
22 ~~the seller and the surety or bank, trust company, savings bank, or~~
23 ~~savings and loan association.~~

24 ~~(j) For the purposes of this section, a health studio shall be~~
25 ~~considered to be a new health studio that is subject to the~~
26 ~~requirements of a bond, letter of credit, or certificate of deposit as~~
27 ~~provided herein, at the time the health studio changes ownership,~~
28 ~~or, in the case of corporate ownership, at the time 30 percent or~~
29 ~~more of the stock changes or has changed ownership. A change~~
30 ~~in ownership of a health studio shall not release, cancel, or~~
31 ~~terminate liability pursuant to this section under any bond, letter~~
32 ~~of credit, or certificate of deposit filed for a health studio as to~~
33 ~~any buyer who purchases a health studio contract while the bond,~~
34 ~~letter of credit, or certificate of deposit is in effect unless the~~
35 ~~transferee, purchaser, successor, or assignee of the health studio~~
36 ~~obtains a bond, letter of credit, or certificate of deposit under this~~
37 ~~section for the benefit of the buyer.~~

38 ~~(k) No contract for health studio services shall be enforceable~~
39 ~~against the buyer if the seller has failed to comply with any~~
40 ~~requirements of this section.~~

~~(f) Health studios shall be excluded from the requirement to file a bond, letter of credit, or certificate of deposit if all payments for which the buyer is obligated including, but not limited to, down payments, initiation fees, enrollment fees, membership fees, or any other direct payments to the health studio do not exceed one hundred fifty dollars (\$150). A health studio shall also be excluded from the requirement to file a bond, letter of credit, or certificate of deposit, if it offers its buyers a monthly dues payment option for each dues payment plan it offers to customers, provided that all of the following apply:~~

~~(1) Both the annual and the monthly membership options are disclosed to customers prior to entering into any membership contract.~~

~~(2) The monthly dues, including any initiation fee or other charge, do not exceed one hundred fifty dollars (\$150).~~

~~(3) The paid-in-full fee is not discounted by more than 10 percent of the sum of the initiation fee and the monthly due payments.~~

~~(4) The term of either option is not more than 12 months and the membership contract does not contain an automatic renewal provision.~~

~~(m) (1) Every health studio shall post, in at least two conspicuous areas within each facility, including, if applicable, an entrance area where buyers are required to register, a sign no smaller than 9 by 14 inches that sets forth the following notice clearly and conspicuously:~~

~~“IMPORTANT NOTICE FOR HEALTH STUDIO
MEMBERS~~

~~The State of California requires certain health studio facilities to have a bond or other form of financial security to protect members in the event the facility closes.~~

~~This facility has posted the financial security required by law or is exempt from this requirement.~~

~~YOU MAY ASK A REPRESENTATIVE OF THE FACILITY FOR PROOF OF THIS FACILITY’S COMPLIANCE WITH THIS LAW. YOU MAY ALSO OBTAIN THIS INFORMATION FROM THE SECRETARY OF STATE.”~~

~~(2) The notice required by paragraph (1) shall be incorporated into any contract for services executed by a health studio in at least 10-point boldface type.~~

~~(n) Every contract for health studio services that offers the consumer the option to pay in installments shall contain the following notice, written in at least 10-point boldface type and placed directly above the space reserved for the signature of the buyer:~~

~~“THIS NOTICE PROVIDES IMPORTANT INFORMATION
ABOUT YOUR PAYMENT OPTIONS~~

~~You may make payments on an installment basis or in a single payment. Paying the full amount may be less expensive, but may involve financial risks to you. Read this notice carefully before making a decision.~~

~~The State of California requires certain health studios to post a bond or other financial security to protect members in the event the health studio closes. This health studio is exempt from this requirement because it gives members the option of paying on an installment basis and therefore it is not required to post a bond or other form of financial security.~~

~~In deciding whether to make your payments on an installment basis, you should be aware that if this health studio closes, although it will remain legally liable for a refund, you may risk losing your money if it is unable to meet its financial obligations to members.”~~

~~(o) Subdivisions (b) to (n), inclusive, do not apply to any health club that owns five or more acres of real property that is used directly for the purpose for which the health studio is formed, and any health studio the use of which is exclusively restricted to residents of a homeowner’s association, cooperative, or condominium and that is owned by and operated on the premises of the homeowner’s association, cooperative, or condominium.~~

~~(p) For purposes of this section, the term “health studio” means a business that enters into contracts for health studio services as defined in Section 1812.81.~~